IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1226 OF 2004.

Manaraviraj Fruit Teak
Plantation Limited. ... Appellant.

Versus.

Shivram Raghunath Karale & others. ... Respondents.

Shri A.S.Khandeparkar for the Appellant.

Mrs.Shakuntala Mudbidri for the Respondents Nos.1 to 4..

CORAM : ABHAY S.OKA, J.

DATED : 27th July, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties.

2. The Second Appeal is admitted on the following substantial questions of law:

i) Whether the Appellate Court could have passed a decree for partition and separate possession of the share of the original Plaintiff inasmuch as in the plaint no prayer was made for passing a decree for partition ?

ii) Even assuming that there was a prayer for partition, whether the suit was maintainable without incorporating all the joint family properties as the subject matter of the suit ?

3. The learned Advocate for the Respondents Nos.1 to 4 waives service.

4. Printing is dispensed with. The Appellant is directed to file private paper book along with sufficient number of copies thereof within a period of one year from today. If the paper book is not filed within the stipulated period, the Appeal will stand dismissed for want of prosecution without further reference to the Court.

3. In addition to service through Court, the Advocate for the Appellant is directed to serve private notice to the Respondent No.5 by Registered Post A.D. and/or Speed Post A.D. and/or by hand delivery. Hamdast allowed.

Judge.